

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 1244 of 1993****With****CIVIL APPLICATION No. 601 of 2005****For Approval and Signature:****HON'BLE MISS JUSTICE R.M.DOSHIT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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LILABEN C SHAH - Petitioner(s)

Versus

MADHUBEN ATMARAM SHAH - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner No(s).: 1.

MR DILIP B RANA for Respondent No(s).: 1 - 1.

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 08/08/2005**ORAL JUDGMENT**

Feeling aggrieved by the judgment and order dated 29th June, 1993 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.89/1988, the respondent-defendant has preferred the present Revision

Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The petitioner-plaintiff is the owner of the suit premises, a residential flat situated at Paldi, Ahmedabad. The suit premises was leased to the respondent-defendant for a monthly rent of Rs.335=00. The plaintiff instituted H.R.P. Suit No.3161/1980 in the Court of Small Causes, Ahmedabad for recovery of possession of the suit premises on the ground, inter alia, that the plaintiff required the suit premises reasonably and bonafide for her residence. The suit was contested by the defendant vide written statement Exh.11. By judgment and order dated 30th June, 1988 the learned trial Judge allowed the suit. The learned trial Judge held that the plaintiff required the suit premises reasonably and bonafide for her residence and that no hardship shall be caused to the defendant in the event the decree for eviction were passed. Accordingly, the learned trial Judge passed decree for recovery of possession in favour of the plaintiff. Feeling aggrieved, the defendant preferred Civil Appeal No.89/1988 before the Appellate Bench, Small Causes Court, Ahmedabad. The

Appellate Bench, by impugned judgment and order, reversed the finding recorded by the trial Court and held that the requirement of the plaintiff of the suit premises was not reasonable, bonafide or genuine. Accordingly, the Appeal was allowed and decree for eviction passed in favour of the plaintiff was set-aside. Therefore, the present Revision Application.

Mr.Bhatt has assailed the judgment of the lower appellate Court and has submitted that the lower appellate Court has manifestly erred in reversing the finding recorded by the trial Court for extraneous reasons. He has submitted that the appellate Court has erred in holding that the plaintiff had failed to prove that her ancestral house which she shared with her mother, brothers and sister was partitioned amongst the joint owners and that she had concealed the extent of her savings from the Court. He has submitted that the plaintiff did not conceal any material fact from the Court. She had admitted that she was residing with her mother, brothers and sister in her ancestral house; that the suit premises was purchased from her own income; that she had reached the age of superannuation and on retirement from service she wanted to reside in the suit

premises. He has submitted that the trial Court has correctly recorded finding in favour of the plaintiff which was not required to be interfered with by the lower appellate Court.

Mr.Rana has supported the judgment of the lower appellate Court. He has submitted that the correct test is that the plaintiff shall have necessity for the suit premises and mere fancy to reside in her own house should not entail a decree for eviction.

Pending this Revision Application the plaintiff has taken out Civil Application No.601/2005. She has stated that the respondents have failed to pay rent since February, 1999 and that since the death of the defendant his heirs have not been residing at the suit premises. The said Civil Application has been contested by one of the sons of the defendant one Shri Pankaj Shah. He has admitted that the rent since March, 2000 had not been paid. He has, however, denied that the suit premises is not being used. According to the said deponent he has been utilizing the suit premises. Today, at the time of hearing, Mr.Rana has stated that since filing of the aforesaid reply the arrears of rent has been paid by the

deponent and the rent has now been paid upto 31st July, 2005.

I do agree with Mr.Bhatt. The lower appellate Court has manifestly erred in drawing adverse inference against the plaintiff on the ground that she did not examine her mother or the brothers or the sisters-in-law. The lower appellate Court has also erred in holding that the plaintiff was not in imminent danger of eviction by her brothers or that she was not suffering humiliation by her brothers and their families. Therefore, the requirement of the plaintiff of the suit premises was not genuine. The lower appellate Court has observed, **"...Therefore, Sec.13(1)(g) of the Rent Act is to be interpreted in such a way so as to give protection to a tenant, but at the same time not to discarding the landlord's requirement if he proves his requirement to be honest and genuine, reasonable, devoid of deception and absence of good faith."** In my opinion, the approach of the lower appellate Court is wholly erroneous and contrary to the settled law. It is proved on record that the plaintiff is residing in her ancestral house with her mother, brothers and sister; that she, her mother and her sister were in occupation of the ground floor of the said house

comprising a room, a kitchen and some space for storage. The plaintiff is an unmarried lady and was serving as a teacher in a school. She purchased the suit premises from her own income. As she was approaching the age of superannuation she wanted to reside in the suit premises after her retirement. The requirement of the plaintiff of the suit premises cannot be said to be articulate or lacking in goodfaith as held by the lower appellate Court. I am, therefore, of the opinion that the trial Court had rightly held that the plaintiff required the suit premises reasonably and bonafide for her residence and that no hardship shall be caused to the defendant if the decree for eviction were passed.

Further, the tenant Atmaram Shah has passed away. His heirs and legal representatives, the widow and the sons, have been substituted. As disclosed in the Civil Application No.601/2005, since the death of the tenant Atmaram Shah the suit premises is not being used and that the respondents had ceased to pay the rent. The said allegation is not controverted by the widow of the deceased Atmaram Shah, and Shri Upendra Atmaram, one of the sons. The other son Pankaj Shah has admitted that the rent was in arrears since March, 2000. Though he has

stated that he is utilizing the suit premises it is not his case that he has been residing in the suit premises.

For the aforesaid reasons, the Revision Application is allowed. The impugned judgment and order dated 29th June, 1993 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.89/1988 is quashed and set-aside. The judgment and decree dated 30th June, 1988 passed by the Small Causes Court, Ahmedabad in H.R.P. Suit No.3161/1980 is restored. Rule is made absolute. The defendant shall bear the cost throughout. Civil Application stands disposed of.

(Ms. R.M.Doshit, J.)

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